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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/720,678	11/24/2003	Frederick N. Biesecker	4869-205US (1126-91)	6263
570	7590	06/29/2005	EXAMINER	
AKIN GUMP STRAUSS HAUER & FELD L.L.P. ONE COMMERCE SQUARE 2005 MARKET STREET, SUITE 2200 PHILADELPHIA, PA 19103			NGO, LIEN M	
			ART UNIT	PAPER NUMBER
			3727	

DATE MAILED: 06/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/720,678

Applicant(s)

BIESECKER ET AL.

Examiner

LIEN TM NGO

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 01 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) 4, 7-10, 13 and 15-22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5, 6, 11, 12 and 14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>3/8/04</u> .  | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election without traverse of Species I (figs. 1-5), claims 1-3, 5, 6, 11, 12 and 14 in the reply filed on 6/10/05 is acknowledged.

### ***Drawings***

2. The drawings are objected to under 37 CFR 1.83(a) because they fail to show the cross section symbolic of plastic material of the closure as described in the specification. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the

applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 11, 12 and 14 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 11, it is unclear whether the closure opening area is equal or larger than the container opening area.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 2, 5, 6, 11 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Quinn et al. (5,582,314). Quinn discloses, in figs. 1 and 3-5, a closure comprising  
  
a generally annular skirt 16 including opposed outer and inner surfaces, the skirt including a generally planar upper surface and a ledge 26 extending from the inner surface and disposed proximate the upper surface, the upper surface having a generally circular opening extending therethrough; a generally circular and planar lid 18 at least

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generally coextensive with the opening, having a top surface and a bottom surface; and a living hinge 66 connecting the upper surface of the skirt and the top surface of the lid and supporting the lid for movement between a closed position, wherein the upper surface of the skirt and the top surface of the lid are generally coplanar, with the bottom surface of the lid being in engagement with the ledge, and an open position, wherein the lid is pivoted away from the upper surface of the skirt to access the opening, wherein the hinge has a length between the upper surface of the skirt and the top surface of the lid which is substantially coplanar with the upper surface of the skirt and the top surface of the lid when the lid is in the closed position (see fig. 1); and a latch 50 extending from the lid and being releaseably engaged with the outer surface of the skirt when the lid is in the closed position. The outer surface further including a generally linear indent 53 and a generally smooth area adjacent the indent on a side of the indent opposite from the upper surface, wherein the latch is generally L-shaped and has a first leg extending generally radially from the lid over the upper surface of the skirt and a second leg extending generally perpendicularly from the first leg such that the second leg is in facing relationship with the indent, the second leg including a generally linear protrusion 56 extending radially from the second leg, the protrusion being complementarily received in the indent when the lid is in a closed position to releasably hold the lid in the closed position, and wherein the latch is released by application of force to the second leg to pull the protrusion out of engagement with the indent. A 10 container having an annular neck portion defining a neck opening having a neck opening area, wherein the skirt opening has an area substantially equal the container neck opening area. The

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length of the living hinge subtends an arc along a circumference of the lid, the arc being in the range of about 15 to 35 degrees (see fig. 1).

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 3 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Quinn in view of Thanisch (5,368,176) or Pehr (5,147,054).

Quinn does not disclose the hinge being formed as an integral, one piece with the lid and the skirt.

It is well known a hinge being formed as an integral, one piece with a lid and a skirt, for example, Thanisch or Pehr teaches a hinge being formed as an integral, one piece with a lid and a skirt.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the hinge in the Quinn closure being formed as an integral, one piece with the lid and the skirt, as taught by Thanisch or Pehr, in order to provide a desirable hinge for the closure.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to LIEN TM NGO whose telephone number is 571-272-4545. The examiner can normally be reached on Monday through Friday from 8:30 AM -6:00 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, LEE YOUNG can be reached on 571-272-4549. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

LIEN TM NGO  
Primary Examiner  
Art Unit 3727

June 24, 2005

